

HOUSE No. 2603

By Mr. Kaufman of Lexington, petition of Jay R. Kaufman and others relative to pension reform. Public Service.

The Commonwealth of Massachusetts

PETITION OF:

Jay R. Kaufman
Mary S. Rogeness

Todd M. Smola
James B. Eldridge

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PENSION REFORM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Subdivision (2) of Section 23 of Chapter 32 of the
2 General Laws is hereby amended by striking out sub-paragraph (b)
3 and inserting in place thereof the following:—
4 (b) The board of each system shall invest and reinvest the funds
5 of such system in the PRIT Fund pursuant to subdivision (8) of
6 Section twenty two, in the PRIT Fund by purchasing shares of said
7 fund, as provided for in the trust agreement adopted by the PRIM
8 Board pursuant to subdivision (2A) or as follows:—
9 (i) in accordance with the standards set forth in subdivision (3),
10 provided that:—
11 (A) no investment of funds shall be made in stocks, securities or
12 other obligations of any company which derives more than 15 per
13 cent of its revenues from the sale of tobacco products.
14 (B) in investing such funds the board shall employ an investment
15 manager or investment managers who shall invest the funds of the
16 system.
17 (C) no funds shall be invested directly in mortgages or collateral
18 loans. No investment of funds shall take place until board has

19 received from the commission an acknowledgement of receipt of the
20 following:—

21 (a) certification that, in making the selection, the board has com-
22 plied with the process established in Section 23A;

23 (b) a copy of the vendor certification required under Section 23A;

24 (c) copies of disclosure forms submitted by the selected vendor;

25 (d) a certification that the investment is not a prohibited invest-
26 ment as set forth in regulations of the commission;

27 (e) in the event that the board has retained a consultant, a copy of
28 the consultant reports pertaining to the investment and the selected
29 vendor;

30 (f) a copy of the board certification required under Section 23A.

31 The commission may withhold the acknowledgement if it deter-
33 mines that it is in the best interest of the retirement system provided,
34 however, that it must so notify the board within ten days of receipt
35 of completed documents as required by this section.

36 Prior to the retention of an investment consultant the board must
37 receive from the commission an acknowledgement of receipt of the
38 following:—

39 (a) certification that, in making the selection, the board has com-
40 plied with the process established in Section 23A;

41 (b) copy of the vendor certification required under Section 23A;

42 (c) copies of disclosure forms submitted by the selected consul-
43 tant;

44 (d) copy of the board certification required under Section 23A.

1 SECTION 2. Section 50 of Chapter 7 of the General Laws as
2 appearing in the 2004 Official Edition is hereby amended by striking
3 out lines 68 through 69 inclusive.

1 SECTION 3. Clause 19 of paragraph (b) of Section (1) of Chapter
2 30B of the General Laws is hereby amended by adding the
3 following:— provided, however, that such procurements shall take
4 place in accordance with the provisions of Section 23A of Chapter
5 32.

1 SECTION 4. Chapter 32 of the General Laws is hereby amended
2 by adding the following section:—

3 Section 21A. (a) As used in this section the following words shall,
4 unless the context requires otherwise, have the following mean-
5 ings:—

6 “Affiliates”, entities which are affiliates of each other when either
7 directly or indirectly one concern or individual controls or has the
8 power to control another, or when a third party controls or has the
9 power to control both.

10 “Commission”, the Public Employee Retirement Administration
11 Commission.

12 “Contract”, a contract for the furnishing of supplies or services to
13 any retirement board.

14 “Debarment”, an exclusion from contracting or subcontracting
15 with a retirement board for a reasonable, specified period of time
16 commensurate with the seriousness of the offense.

17 “Person”, any natural person, business, partnership, corporation,
18 union, committee, club or other organization, entity or group of indi-
19 viduals.

20 “Retirement board”, a board established pursuant to the provi-
21 sions of Chapter 32, the provisions of Chapter 34B or the Massachu-
22 setts water resources authority retirement board, excluding the
23 pension reserves investment management board.

24 “Suspension”, the temporary disqualification of a vendor who is
25 suspected upon adequate evidence of engaging or having engaged in
26 conduct which constitutes grounds for debarment.

27 “Vendor”, any person that has furnished or seeks to furnish sup-
28 plies or services under a contract with a retirement board.

29 (b) The Commission shall establish and maintain a consolidated
30 list of vendors to whom contracts shall not be awarded and from
31 whom offers, bids, or proposals shall not be solicited. The list shall
32 show at a minimum the following information:— (1) the names of
33 those persons debarred or suspended in alphabetical order with
34 appropriate cross reference where more than one name is involved in
35 a single debarment or suspension; (2) the basis of authority for each
36 debarment or suspension; (3) the extent of restrictions imposed; (4)
37 the termination date of each debarment or suspension; and (5) in the
38 case of a suspension, the hearing date, if and when set, for debar-
39 ment proceedings.

40 The commission shall cause the list to be kept current by the
41 issuance of notices of additions and deletions. The list shall be pub-
42 lished on a periodic basis, together with notices of additions and
43 deletions therefrom, in the goods and services bulletin and the cen-
44 tral register published by the state secretary and in such other publi-
45 cations as the commission shall designate. The commission shall
46 also forward said list to the inspector general, the attorney general,
47 and the state auditor.

48 (c) Debarment may be imposed for the following causes:—

49 (1) conviction or final adjudication by a court or administrative
50 agency of competent jurisdiction of any of the following offenses:—

51 (i) a criminal offense incident to obtaining or attempting to obtain a
52 public or private contract or subcontract, or in the performance of
53 such contract or subcontract; (ii) a criminal offense involving
54 embezzlement, theft, forgery, bribery, falsification or destruction of
55 records, receiving stolen property or any other offense indicating a
56 lack of business integrity or business honesty which seriously and
57 directly affects the vendor's present responsibility as a public con-
58 tractor; (iii) a violation of state or federal antitrust laws arising out of
59 the submission of bids or proposals; (iv) a violation of Chapter two
60 hundred and sixty-eight A; (v) a violation of Chapter thirty-two-.

61 (2) substantial evidence, as determined by the commission, of any
62 of the following acts:— (i) willfully supplying materially false infor-
63 mation incident to obtaining or attempting to obtain or performing
64 any public contract or subcontract; (ii) willful failure to comply with
65 record-keeping and accounting requirements prescribed by law or
66 regulation; (iii) a record of failure to perform or of unsatisfactory
67 performance in accordance with the terms of one or more public
68 contracts, provided that such failure to perform or unsatisfactory per-
69 formance has occurred within a reasonable period of time preceding
70 the determination to debar and provided further that such failure to
71 perform or unsatisfactory performance was not caused by factors
72 beyond the vendor's control; (iv) the submission to the board or the
73 commission of an inaccurate disclosure statement (v); the failure to
74 disclose to the board and the commission any compensation pro-
75 vided to any person in regards to attempting to obtain or the perfor-
76 mance of a public contract or subcontract, including, but not limited
77 to, compensation provided by third parties retained by the vendor to
78 any other person; (vi) any other cause affecting the responsibility of

79 a vendor which the commission determines to be of such a serious
80 and compelling nature as to warrant debarment.

81 (d) No vendor may be suspended unless the commission has first
82 informed the vendor by written notice of the proposed suspension
83 mailed by registered or certified mail to the vendor's last known
84 address, except when the commission determines that immediate
85 suspension is necessary to prevent serious harm to the retirement
86 system, in which case the suspension shall take effect immediately
87 upon signing by the executive director of an order of suspension,
88 and notice shall be mailed to the vendor at the earliest opportunity.
89 The notice shall inform the vendor of the reasons for the proposed
90 suspension and shall state that the vendor may within fourteen days
91 respond in writing and may in such response request a hearing. The
92 commission may extend the period for response at the request of the
93 vendor. The commission shall determine whether to impose the sus-
94 pension or, in the case of an emergency suspension imposed prior to
95 notice to the vendor, whether to continue the suspension after
96 reviewing the vendor's response, if any, and making such investiga-
97 tion as the commission determines is necessary and appropriate. An
98 indictment, or any information or other filing by a public agency
99 charging a criminal offense, for any of the offenses listed in para-
100 graph (1) of subsection (c) shall constitute adequate evidence to sup-
101 port a suspension.

102 If the vendor requests a hearing, and the suspension is not based
103 on an indictment, the commission shall conduct a hearing according
104 to the rules for the conduct of adjudicatory hearings established by
105 the secretary of administration pursuant to Chapter thirty A. Such
106 hearing shall be initiated within thirty days of the imposition of the
107 suspension, unless the vendor requests that the hearing be delayed.
108 Officers and employees of the commission and records of the com-
109 mission shall not be subject to subpoena for such hearing, if in the
110 opinion of the commission production of records or testimony would
111 prejudice any pending investigation by the commission.

112 A suspension shall not exceed twelve months unless a pending
113 administrative or judicial proceeding in which the vendor is a party
114 may result in a conviction or final adjudication of an offense listed in
115 paragraph (1) of subsection (c).

116 (e) No vendor may be debarred under this section unless the com-
117 mission has first informed the vendor by written notice of the pro-

118 posed debarment mailed by registered or certified mail to the ven-
119 dor's last known address. The notice shall inform the vendor of the
120 reasons for the debarment and shall state that the vendor will be
121 accorded an opportunity for a hearing if the vendor so requests
122 within fourteen days of receipt of the notice. A hearing requested
123 under this paragraph shall be conducted by the commission within
124 sixty days of receipt of the request, unless the commission grants
125 additional time therefore at the request of the vendor. The hearing
126 shall be conducted according to the rules for the conduct of adjudi-
127 catory hearings established by the commissioner of administration
128 pursuant to Chapter thirty A. A debarment shall not be imposed until
129 (i) fourteen days after receipt by the vendor of notice of the proposed
130 debarment if no hearing is requested, or (ii) the issuance of a written
131 decision by the commission which makes specific findings that there
132 is sufficient evidence to support the debarment and that debarment
133 for the period specified in the decision is required to protect the
134 integrity of the public contracting process. A vendor shall be notified
135 forthwith of the decision by registered or certified mail, and of the
136 vendor's right to judicial review in the event that the decision is
137 adverse to the vendor. If a suspension precedes a debarment, the sus-
138 pension period shall be considered in determining the debarment
139 period.

140 (f) A debarment or suspension may include all known affiliates of
141 a vendor. The decision to include a known affiliate within the scope
142 of a debarment or suspension shall be made on a case-by-case basis,
143 after giving due regard to all relevant facts and circumstances. The
144 offense or act of an individual justifying suspension, or the evidence
145 justifying a suspension, may be imputed to the entity with which the
146 individual is connected when such offense or act occurred in connec-
147 tion with the individual's performance of duties for or on behalf of
148 the entity or with the knowledge, approval, or acquiescence of the
149 entity or one or more of its principals. The entity's acceptance of the
150 benefits derived from the conduct shall be evidence of such knowl-
151 edge, approval, or acquiescence. The offense or act of an entity justi-
152 fying debarment, or the evidence justifying a suspension, may be
153 imputed to any officer, director, shareholder, partner, employee or
154 other individual associated with the entity who participated in, knew
155 of, or had reason to know of the entity's act. An entity may not be

156 suspended or debarred except in accordance with the procedures set
157 forth in this section.

158 (g) In determining whether to debar a vendor, or the period of a
159 debarment, all mitigating facts and circumstances shall be taken into
160 consideration. A debarment may be removed or the period thereof
161 may be reduced by the commission upon the submission of an appli-
162 cation supported by documentary evidence setting forth appropriate
163 grounds for the granting of relief, such as newly discovered material
164 evidence, reversal of a judgment or conviction, bona fide change of
165 ownership or management, or the elimination of the cause for which
166 the debarment was imposed.

167 (h) During the period for which a person has been debarred or
168 suspended, that person shall not submit or cause to be submitted
169 offers, bids, or proposals to any retirement board, nor shall any
170 retirement board solicit or consider offers, bids, or proposals from,
171 nor execute, renew, or extend any contract with, a debarred or sus-
172 pended vendor, and a vendor shall not contract for services from a
173 debarred or suspended subcontractor on any contract with a retire-
174 ment system.

1 SECTION 5. Subdivision (3) of Section 23 of Chapter 32 of the
2 General Laws is hereby amended by adding the following:—

3 Each member of a retirement board established pursuant to the
4 provisions of this chapter shall upon the commencement of their
5 term file with the commission a statement acknowledging that they
6 are aware of and will comply with the standards set forth in Chapter
7 268A of the General Laws, the provisions of this chapter and the
8 provisions of regulations promulgated pursuant to this chapter.

1 SECTION 6. Chapter 32 of the General Laws is hereby amended
2 by adding the following section:—

3 Section 20C. (a) Every member of a retirement board shall file a
4 statement of financial interests for the preceding calendar year with
5 the commission within thirty days after becoming a member of a
6 retirement board, on or before May first of each year thereafter that
7 such person is a member of a retirement board and on or before May
8 first of the year after such person ceases to be a member of a retire-
9 ment board;

10 (b) The commission shall, upon receipt of a statement of financial
11 interests pursuant to the provisions of this section, issue to the

12 person filing such statement a receipt verifying the fact that a state-
13 ment of financial interests has been filed and a receipted copy of
14 such statement.

15 (c) No member of a retirement board shall be allowed to continue
16 in his duties unless he has filed a statement of financial interests
17 with the commission as required by this section.

18 (d) The statement of financial interests filed pursuant to the provi-
19 sions of this section shall be on a form prescribed by the commission
20 and shall be signed under penalty of perjury by the reporting person.

21 (e) Reporting persons shall disclose, to the best of their knowl-
22 edge, the following information for the preceding calendar year, or
23 as of the last day of said year with respect to the information
24 required by clauses (2), (3) and (6) below; such persons shall also
25 disclose the same information with respect to their immediate family
26 provided, however, that no amount need be given for such informa-
27 tion with regard to the reporting person's immediate family:—

28 (1) the name and address of, the nature of association with, the
29 share of equity in, if applicable, of each business with which he is
30 associated;

31 (2) the identity of all securities and other investments with a fair
32 market value of greater than one thousand dollars which were bene-
33 ficially owned, not otherwise reportable hereunder;

34 (3) the name and address of each creditor to whom more than one
35 thousand dollars was owed; provided, however, that obligations
36 arising out of retail installment transactions, educational loans, med-
37 ical and dental expenses, debts incurred in the ordinary course of
38 business, and any obligation to make alimony or support payments,
39 shall not be reported; and provided, further, that such information
40 need not be reported if the creditor is a relative of the reporting
41 person within the third degree of consanguinity or affinity;

42 (4) the name and address of the source, and the cash value of any
43 reimbursement for expenses aggregating more than one hundred dol-
44 lars in the calendar year if the recipient is a member of a retirement
45 board and the source of such reimbursement is a person having a
46 direct interest in a matter before the retirement board of which the
47 recipient is a member;

48 (5) the name and address of the donor, and the fair market value,
49 if determinable, of any gifts in the calendar year, if the recipient is a
50 member of a retirement board and the source of such gift(s) is a

51 person having a direct interest in a matter before the retirement
52 board of which the recipient is a member;

53 (6) the name and address of the source, and the fair market value,
54 of any honoraria aggregating more than one hundred dollars if the
55 recipient is a member of a retirement board and the source of such
56 honoraria is a person having a direct interest in a matter before a
57 retirement board;

58 (7) the name and address of any creditor who has forgiven an
59 indebtedness of over one thousand dollars, and the amount forgiven
60 if the creditor is a person having a direct interest in a matter before a
61 retirement board; provided, however, that no such information need
62 be reported if the creditor is a relative within the third degree of con-
63 sanguinity or affinity of the reporting person, or the spouse of such a
64 relative; and ,

65 (8) the name and address of any business from which the
66 reporting person is taking a leave of absence;

67 Nothing in this section shall be construed to require the disclosure
68 of information, which is privileged by law.

69 Failure of a reporting person to file a statement of financial inter-
70 ests within ten days after receiving notice in writing from the Com-
71 mission which states in detail the deficiency and the penalties for
72 failure to file a statement of financial interests, or the filing of an
73 incomplete statement of financial interests after receipt of such a
74 notice shall result in the removal of the reporting person from the
75 board from the board and he or she shall not be permitted to serve on
76 any retirement board established pursuant to the provisions of this
77 chapter. Said failure is a violation of this chapter and the commis-
78 sion may initiate appropriate proceedings pursuant to the provisions
79 of Section twenty-four.

1 SECTION 7. Clause 26th of Section 7 of Chapter 4 of the General
2 Laws is hereby amended by adding the following sub-clause:—
3 (q) statements filed pursuant to Section 20C of Chapter 32.

1 SECTION 8. Section 20 of Chapter 32 of the General Laws is
2 hereby amended by adding the following paragraph:—

3 (4 7/8 C) No employee, contractor, vendor or any person
4 receiving any remuneration, financial benefit or consideration of any
5 kind, other than a retirement benefit or the statutory stipend for

6 serving on the retirement board, from a retirement board or from any
7 person doing business with a retirement board shall be eligible to
8 serve on a retirement board provided, however, that an employee of
9 a retirement board may serve on a retirement board other than the
10 retirement board by which he or she is employed and provided, fur-
11 ther, that the provisions of this paragraph shall take effect at the
12 completion of the board members current term.

1 SECTION 9. Paragraph (b) of Section 19 of Chapter 34B of the
2 General Laws is hereby amended in line 14 by inserting the
3 following after the word “32”:—

4 Provided that no employee, contractor, vendor or person receiving
5 any remuneration, financial benefit or consideration of any kind,
6 other than a retirement benefit or the statutory stipend for serving on
7 the retirement board, from a retirement board or from any person
8 doing business with a retirement board shall be eligible to serve on a
9 retirement board provided, however, that an employee of a retire-
10 ment board may serve on a retirement board other than the retire-
11 ment board by which he or she is employed and provided, further,
12 that the provisions of this paragraph shall take effect at the comple-
13 tion of the board members current term.

1 SECTION 10. Chapter 32 of the General Laws is hereby amended
2 by adding the following section:—

3 Section 23A (a) This section shall apply to every retirement board
4 contract for the procurement of investment, actuarial, legal and
5 accounting services.

6 As used in this section the following words shall, unless the con-
7 text requires otherwise, have the following meanings:—

8 “Contract”, all types of agreement for the procurement of serv-
9 ices, regardless of what the parties may call the agreement.

10 “Contractor”, a person having a contract with the retirement
11 board.

12 “Retirement board”, a board established under the provisions of
13 this chapter , the provisions of Chapter thirty – four B or the Massa-
14 chusetts water resources authority retirement board excluding the
15 pension reserves investment management board.

16 “Majority vote”, as to any action by or on behalf of a retirement
17 board, a simple majority of the board.

18 “Minor informalities”, minor deviations, insignificant mistakes,
19 and matters of form rather than substance of the proposal, or contract
20 document which can be waived or corrected without prejudice to
21 other offerors, potential offerors, or the retirement board.

22 “Person”, any natural person, business, partnership, corporation,
23 union, committee, club, or other organization, entity or group of
24 individuals.

25 “Procurement”, acquiring a service, and all functions that pertain
26 to the obtaining of a service, including description of requirements,
27 selection and solicitation of sources, preparation and award of con-
28 tract, and all phases of contract administration.

29 “Procurement officer”, an individual duly authorized by the retire-
30 ment board to assist in a procurement.

31 “Proposal”, a written offer to provide a service at a stated price
32 submitted in response to a request for proposals.

33 “Purchase description”, the words used in a solicitation to
34 describe the services to be purchased, including specifications
35 attached to or incorporated by reference into the solicitation.

36 “Request for proposals”, the documents utilized for soliciting pro-
37 posals, including documents attached or incorporated by reference.

38 “Responsible bidder or offeror”, a person who has the capability
39 to perform fully the contract requirements, and the integrity and reli-
40 ability which assures good faith performance.

41 “Responsive bidder or offeror”, a person who has submitted a bid
42 or proposal which conforms in all respects to the request for pro-
43 posals.

44 “Services”, the furnishing of labor, time, or effort by a contractor,
45 not involving the furnishing of a specific end product other than
46 reports. This term shall not include employment agreements, collec-
47 tive bargaining agreements, or grant agreements.

48 (1) A retirement board shall enter into procurement contracts for
49 investment, actuarial, legal and accounting services utilizing com-
50 petitive sealed proposals, in accordance with the provisions of this
51 section.

52 (2) A retirement board that awards a contract shall maintain a file
53 on each such contract and shall include in such file a copy of all
54 written documents required by this section. Written documents
55 required by this section shall be retained by the retirement board for
56 at least six years from the date of final payment under the contract.

57 (b) The retirement board or its procurement officer shall give
58 public notice of the request for proposals and a reasonable time prior
59 to the date for the opening of proposals. The notice shall:—

60 (1) indicate where, when and for how long the request for pro-
61 posal may be obtained;

62 (2) describe the service desired, and reserve the right of the retire-
63 ment board to reject any or all bids;

64 (3) remain posted, for at least two weeks, in a conspicuous place
65 in or near the offices of the retirement board until the time specified
66 in the request for proposals; and

67 (4) be published at least once, not less than two weeks prior to the
68 time specified for the receipt of proposals, in a newspaper of general
69 circulation within the area served by the retirement board and in the
70 case of a procurement for investment, accounting, actuarial or legal
71 services in a publication of interest to those engaged in providing
72 such services.

73 The retirement board or its procurement officer shall also place
74 the notice in any publication established by the state secretary for the
75 advertisement of such procurements.

76 The retirement board or its procurement officer may distribute
77 copies of the notice to prospective bidders, and may compile and
78 maintain lists of prospective bidders to which notices may be sent.

79 (c) The retirement board shall unconditionally accept a proposal
80 without alteration or correction, except as provided in this para-
81 graph. A bidder may correct, modify, or withdraw a proposal by
82 written notice received in the office designated in the request for
83 proposals prior to the time and date set for the proposal opening.
84 After proposal opening, a bidder may not change the price or any
85 other provision of the proposal in a manner prejudicial to the inter-
86 ests of the retirement board or fair competition. The retirement board
87 shall waive minor informalities or allow the bidder to correct them.
88 If a mistake and the intended proposal are clearly evident on the face
89 of the proposal document, the procurement officer shall correct the
90 mistake to reflect the intended correct proposal and so notify the
91 bidder in writing, and the bidder may not withdraw the proposal. A
92 bidder may withdraw a proposal if a mistake is clearly evident on the
93 face of the proposal document but the intended correct proposal is
94 not similarly evident.

95 (d) The retirement board shall solicit proposals through a request
96 for proposals. The request for proposals shall include:—

97 (1) the time and date for receipt of proposals, the address of the
98 office to which the proposals are to be delivered, the maximum time
99 for proposal acceptance by the retirement board;

100 (2) the purchase description and all evaluation criteria that will be
101 utilized pursuant to paragraph (d); and

102 (3) all contractual terms and conditions applicable to the procure-
103 ment provided that the contract may incorporate by reference a plan
104 submitted by the selected offeror for providing the required services.

105 The request for proposals may incorporate documents by refer-
106 ence; provided, however, that the request for proposals specifies
107 where prospective offerors may obtain the documents. The retire-
108 ment board or its procurement officer shall make copies of the
109 request for proposals available to all persons on an equal basis.

110 (e) The retirement board or its procurement officer shall not open
111 the proposals publicly, but shall open them in the presence of one or
112 more witnesses at the time specified in the request for proposals.
113 Notwithstanding the provisions of section seven of Chapter four,
114 until the completion of the evaluations, or until the time for accep-
115 tance specified in the request for proposals, whichever occurs earlier,
116 the contents of the proposals shall remain confidential and shall not
117 be disclosed to competing offerors. At the opening of proposals the
118 retirement board or its procurement officer shall prepare a register of
119 proposals which shall include the name of each offeror and the
120 number of modifications, if any, received. The register of proposals
121 shall be open for public inspection.

122 (f) The retirement board or its consultant retained pursuant to the
123 provisions of this chapter shall be responsible for the initial evalua-
124 tion of the proposals. The retirement board or its consultant retained
125 pursuant to the provisions of this chapter shall prepare their initial
126 evaluations based solely on the criteria set forth in the request for
127 proposals. The evaluations shall specify in writing:—

128 (1) for each evaluation criterion, a rating of each proposal as
129 highly advantageous, advantageous, not advantageous, or unaccept-
130 able, and the reasons for the rating;

131 (2) a composite rating for each proposal, and the reasons for the
132 rating; and

133 (3) revisions, if any, to each proposed plan for providing the
134 required services which should be obtained by negotiation prior to
135 awarding the contract to the offeror of the proposal.

136 In the event the initial evaluation is conducted by a consultant
137 retained pursuant to the provisions of this chapter said consultant
138 shall review all initial evaluations with the retirement board and pro-
139 vide to each member of the retirement board the initial evaluation of
140 each proposal.

141 (g) The retirement board shall determine the most advantageous
142 proposal from a responsible and responsive offeror taking into
143 consideration price and the evaluation criteria set forth in the request
144 for proposals. The retirement board shall award the contract by
145 written notice to the selected offeror within the time for acceptance
146 specified in the request for proposals. The parties may extend the
147 time for acceptance by mutual agreement. The retirement board may
148 condition an award on successful negotiation of the revisions speci-
149 fied in the evaluation, and shall explain in writing the reasons for
150 omitting any such revision from a plan incorporated by reference in
151 the contract.

152 (h) In the event of a competitive process to select an investment
153 service provider the request for proposals shall include mandatory
154 contractual terms and conditions to be incorporated into the contract
155 including provisions stating that the contractor is a fiduciary with
156 respect to the funds which the contractor invests on behalf of the
157 retirement board, provisions stating that the contractor shall not be
158 indemnified by the retirement board, provisions requiring the con-
159 tractor to annually inform the commission and the board of any
160 arrangements in oral or in writing, for compensation or other benefit
161 received or expected to be received by the contractor or a related
162 person from others in connection with the contractors services to the
163 retirement board or any other client, provisions requiring the con-
164 tractor to annually disclose to the commission and the retirement
165 board any compensation, in whatever form, paid or expected to be
166 paid, directly or indirectly, by the contractor or a related person to
167 others in relation to the contractors services to the retirement board
168 or any other client, and provisions requiring the contractor to annu-
169 ally disclose to the commission and the retirement board in writing
170 any conflict of interest the contractor may have that could reason-
171 ably be expected to impair the contractor's ability to render unbiased

172 and objective services to the retirement board. Other mandatory con-
173 tractual terms and conditions shall address investment objectives,
174 brokerage practices, proxy voting and tender offer exercise proce-
175 dures, terms of employment and termination provisions. The retire-
176 ment board shall make a preliminary determination of the most
177 advantageous proposal from a responsible and responsive offeror
178 taking into consideration price and the evaluation criteria set forth in
179 the request for proposals. The retirement board or its duly designated
180 agent, subject to the approval of the retirement board, may negotiate
181 all terms of the contract not deemed mandatory or non-negotiable
182 with such offeror. If, after negotiation with such offeror, the retire-
183 ment board in consultation with its duly designated agent and its
184 consultant retained pursuant to the provisions of this chapter deter-
185 mines that it is in the best interests of the retirement board, the retire-
186 ment board in consultation with its consultant retained pursuant to
187 the provisions of this chapter may determine the proposal which is
188 the next most advantageous proposal from a responsible and respon-
189 sive offeror taking into consideration price and the evaluation cri-
190 teria set forth in the request for proposals, and may negotiate all
191 terms of the contract with such offeror. The retirement board shall
192 award the contract to the most advantageous proposal from a respon-
193 sible and responsive offeror taking into consideration price, the eval-
194 uated criteria set forth in the request for proposals, and the terms of
195 the negotiated contract. The retirement board shall award the con-
196 tract by written notice to the selected offeror within the time for
197 acceptance specified in the request for proposals. The time for
198 acceptance may be extended for up to 45 days by mutual agreement
199 between the retirement board and the responsible and responsive
200 offeror offering the most advantageous proposal as determined by
201 the retirement board.

202 On or before January 1 of each year the contractor shall file the
203 disclosures required herein with the board and the commission.
204 Failure to file disclosures or the filing of inaccurate disclosures shall
205 subject the contractor to proceedings under Section 21A.

206 (6) The retirement board may cancel a request for proposals or
207 may reject in whole or in part any and all proposals when the retire-
208 ment board determines that cancellation or rejection serves the best
209 interests of the system. The retirement board shall state in writing
210 the reason for a cancellation or rejection.

211 (7) A person submitting a proposal for the procurement or dis-
212 posal of services to any retirement board shall certify in writing on
213 the proposal as follows:—

214 The undersigned certifies under penalties of perjury that this pro-
215 posal has been made and submitted in good faith and without collu-
216 sion or fraud with any other person. As used in this certification, the
217 word “person” shall mean any natural person, business, partner-
218 ship, corporation, union, committee, club, or other organization,
219 entity, or group of individuals.

220

221 _____
(Signature of individual submitting bid or proposal)

222

223 _____
(Name of business)

224 (8) Each retirement board member shall certify to the commission
225 in writing with respect to a procurement subject to the provisions of
226 this section, as follows:—

227 The undersigned certifies under penalties of perjury that, to the
228 best of his/her knowledge and belief, this proposal has been made
229 and submitted in good faith and without collusion or fraud with any
230 other person. As used in this certification, the word “person” shall
231 mean any natural person, business, partnership, corporation, union,
232 committee, club, or other organization, entity, or group of individ-
233 uals.

234

235 _____
(Signature of individual retirement board member)

236

237 _____
(Name of retirement board)

238 (9) No person shall cause or conspire to cause the splitting or
239 division of any request for proposals, proposal, solicitation, or quo-
240 tation for the purpose of evading a requirement of this section.

241 (10) Unless otherwise provided by law and subject to paragraph
242 (a), a retirement board may enter into a contract for any period of
243 time which serves the best interests of the retirement board; pro-
244 vided, however, that the retirement board shall include in the solici-
245 tation the term of the contract and conditions of renewal, extension
246 or purchase, if any.

247 (a) A retirement board shall not award a contract for a term
248 exceeding five years, including any renewal, extension, or option
249 provided, however, that a retirement board may participate in a lim-

250 ited partnership, trust or other entity with a term for a period longer
251 than five years as part of an investment of system assets.

252 When a contract is to contain an option for renewal, extension, or
253 purchase, the solicitation shall include notice of the provision. The
254 retirement board shall retain sole discretion in exercising the option,
255 and no exercise of an option shall be subject to agreement or accep-
256 tance by the contractor.

257 (b) The retirement board shall not exercise an option for renewal,
258 extension or purchase unless the retirement board, after reasonable
259 investigation of costs and benefits, has determined in writing that the
260 exercise of the option is more advantageous than alternate means of
261 procuring comparable services.

262 (11) All specifications shall be written in a manner which
263 describes the requirements to be met without having the effect of
264 exclusively requiring a proprietary service, or a procurement from a
265 sole source.

266 (12) All contracts shall be in writing, and the retirement board
267 shall make no payment for a service rendered prior to the execution
268 of such contract.

269 (a) A contract made in violation of this section shall not be valid,
270 and the retirement board shall make no payment under such contract.
271 Minor informalities shall not require invalidation of a contract.

272 (b) A person who causes or conspires with another to cause a con-
273 tract to be solicited or awarded in violation of a provision of this
274 section shall forfeit and pay to the appropriate retirement board a
275 sum of not more than two thousand dollars for each violation. In
276 addition, the person shall pay double the amount of damages sus-
277 tained by the retirement board by reason of the violation, together
278 with the costs of any action. If more than one person participates in
279 the violation, the damages and costs may be apportioned among
280 them.

281 (c) The commission or the retirement board shall have authority
282 to institute a civil action to enforce paragraph (b).

1 SECTION 11. Section 23 of Chapter 32 of the General Laws is
2 hereby amended by striking out subdivision (4) and inserting in
3 place thereof the following:—

4 (4) If the commission determines that a board of any retirement
5 system has violated or neglected to comply with any provisions of

6 this chapter, or the rules and regulations promulgated by the Com-
7 mission, the Commission may determine that such system should be
8 managed in accordance with orders of said commission. The com-
9 mission is hereby authorized to appoint a committee consisting of
10 three members, two of whom shall be members or designees of the
11 commission and one who shall be a member of a retirement board
12 other than the board subject to the commission determination chosen
13 by the commission from a list of three nominees provided by the
14 Massachusetts Association of Contributory Retirement Systems
15 (MACRS), to oversee any board that is responsible for the adminis-
16 tration of any such system. Based upon the recommendation of said
17 committee the commission shall, direct the board to take or desist
18 from any action in order to insure that the system is managed with
19 reasonable care, skill, prudence and diligence. Such direction may
20 include, but is not limited to, the following:—

- 21 (a) transfer of assets to the PRIT Fund;
- 22 (b) termination of contracts;
- 23 (c) approval or denial of retirement benefits;
- 24 (d) employment or termination of employees; and,
- 25 (e) conduct a fiduciary audit

26 Any person receiving a notice from the commission as set out
27 above shall not have a right to appeal the receipt of such notice to
28 the Contributory Retirement Appeal Board. Any person receiving
29 any communication, either verbal or written, subsequent to the
30 notice as required by this section in connection with the same matter
31 shall not have a right to appeal the receipt of such communication to
32 the Contributory Retirement Appeal Board. Any person aggrieved
33 by any action taken, notice made or determination rendered by the
34 commission in connection with this section shall have a right to
35 appeal to the superior court, in accord with Section 16(6) of Chapter
36 32.

1 SECTION 12. Subdivision (4) of Section 16 of Chapter 32 of the
2 General Laws, as appearing in the 2004 Official Edition, is hereby
3 amended by inserting after the word “fulfilled”, in line 99, the
4 following words:— and matters subject to review by the superior
5 court as provided for in subdivision (6).

1 SECTION 13. Section 16 of Chapter 32 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by adding
3 the following subdivision:—

4 (6) The commission may institute appropriate proceedings in the
5 superior court for enforcement of its final orders or decisions issued
6 pursuant to subdivision (4) of Section 23 of Chapter 32. Any party
7 aggrieved by a final order or decision of the commission pursuant to
8 subdivision (4) of Section 23 of Chapter 32 may institute proceed-
9 ings for judicial review in the superior court within thirty days after
10 receipt of such order or decision. Any proceedings in the superior
11 court shall, insofar as applicable, be governed by the provisions of
12 Section fourteen of Chapter thirty A, and may be instituted in the
13 superior court for the county (a) where the parties or any of them
14 reside or have their principal place of business within the Common-
15 wealth, or (b) where the commission has its principal place of busi-
16 ness, or (c) of Suffolk. The commencement of such proceedings
17 shall not, unless specifically ordered by the court, operate as a stay
18 of the commission's order or decision. If the commission, pursuant
19 to the authority granted by Section 24(1) of Chapter 32, seeks to
20 compel the observance of or restrain the violation of the provisions
21 of Sections 1 to 28, inclusive, a party aggrieved by such an action
22 may appeal to the superior court in accord with the provisions of
23 Section 14 of Chapter 30A. If an action pursuant to Section 24 (1)
24 has already been instituted in the superior court, the person's right to
25 review shall flow from the superior court case which has already
26 begun.

1 SECTION 14. Paragraph (a) of subdivision (6) of Section 20 of
2 Chapter 32 of the General Laws, as appearing in the 2002 Official
3 Edition, is hereby amended by striking out lines 842 through 845
4 inclusive and inserting in place thereof the following:—

5 (a) The elected and appointed members of any city, town, county,
6 regional, district, or authority retirement board upon acceptance of
7 the appropriate legislative body shall receive a stipend provided,
8 however, that said stipend shall not be less than three thousands dol-
9 lars per annum nor exceed seven thousand five hundred dollars per
10 annum; provided further,

1 SECTION 15. Said subdivision, as so appearing, is hereby further
2 amended in line 853 by striking out the words “three thousand” and
3 inserting in place thereof the word “seven thousand five hundred”.

1 SECTION 16. Section 20 of Chapter 32 of the General Laws is
2 hereby amended by adding the following sub-division:—

3 (7) In order to serve as a member of a retirement board an indi-
4 vidual shall comply with the provisions of this subdivision.

5 Elected or appointed members shall be required to undertake four
6 hours of training annually sponsored by the commission. The com-
7 mission shall offer at least four opportunities during the year for
8 board members to meet this requirement at times and places of con-
9 venience throughout the state. The commission may offer this educa-
10 tion or may contract with other parties to provide such training. The
11 training curriculum shall, at a minimum, include the topics of fidu-
12 ciary responsibility, ethical conduct, and conflict-of-interest.

13 Elected or appointed members shall also be required to undertake
14 an additional four hours training annually as prescribed by the com-
15 mission provided by the Massachusetts Association of Contributory
16 Retirement Systems or other local, state, regional and national orga-
17 nizations recognized by the commission as having expertise in
18 retirement issues of importance to retirement board members or
19 other entities, on topics acceptable as the commission may from time
20 to time determine. The commission shall certify such organizations
21 as appropriate for conducting such training upon application to the
22 commission.

23 The commission shall provide retirement boards with a statement
24 of completion of education form on or before December 31 of each
25 year. The board shall provide the forms to their members. The form
26 shall state under the pains and penalties of perjury whether or not the
27 retirement board member has undertaken the combined eight hours
28 of continuing education required by this sub-division. Retirement
29 board members shall submit the completed form by January 15 of
30 the year following.

31 Any retirement board member who without good cause as deter-
32 mined by the commission has failed to file a statement of completion
33 of education form with PERAC by January 15 shall be notified by
34 PERAC by February 15 of the failure to file. The commission will
35 afford the board member 30 days to provide just cause for why he or

36 she did not file the required form. Failure to provide acceptable justifi-
37 cation as determined by the commission for not filing the form in a
38 timely manner within 30 days shall result in suspension of voting
39 rights until the form is successfully completed. The commission
40 shall notify the retirement board of the suspension of voting rights of
41 the board member in question and that board member shall not be
42 entitled to vote on any matter before the retirement board.

43 Any retirement board member who without good cause after
44 review by the commission has been determined to have not success-
45 fully completed the aforementioned continuing education require-
46 ments shall have his/her board voting rights suspended until he or
47 she has successfully completed the education requirements of the
48 previous year. The commission will afford the board member 30
49 days to provide good cause for why he or she did not complete the
50 required education requirements for the previous year. Board mem-
51 bers shall have 180 days to successfully complete the continuing
52 education requirements for the previous year.

53 Failure to successfully complete the education requirements shall
54 prohibit a retirement board member from serving beyond the conclu-
55 sion of the term in which the failure took place. In the event the non-
56 complying retirement board member is an ex-officio member his or
57 her term shall cease upon notification to the retirement board by the
58 commission of that non-compliance.

59 Each retirement board shall notify all prospective board members
60 and board members of the requirement to complete education
61 requirements at the time of receiving information about seeking
62 election to a retirement board, or prior to being appointed to a retire-
63 ment board.

64 The commission shall annually notify board members of the
65 requirement to complete continuing education.

66 The requirements established by this sub-division shall become
67 effective for calendar year 2007.

1 SECTION 17. Chapter 150E Section 7 is hereby amended by
2 adding the following new subsection (e):—

3 Any employer entering into a collective bargaining agreement
4 with an employee organization must provide a copy of said agree-
5 ment to the retirement board to which the employees covered by the
6 agreement are members. All retirement systems must maintain files

7 of all active collective bargaining agreements which cover the sys-
8 tems members. The retirement board shall review collective bar-
9 gaining agreements for compliance with the provisions of Chapter
10 32.

1 SECTION 18. Chapter 32 Section 21 is hereby amended in line
2 15 by adding the following new sentence after the word “system”:—
3 Each board shall maintain copies of all collective bargaining
4 agreements which cover the systems members and shall make such
5 agreements available to the commission for review at such time as
6 the commission shall specify.